

**REMARKS**

Claims 1-30 are pending in the application. Of these pending claims, Claims 1-30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rushdy, et al. (U.S. Patent No. 6,319,284) in view of Berman (U.S. Patent No. 6,017,366); Claims 5,7, 19, and 20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rushdy, et al. in view of Berman and further in view of Bramlet (U.S. Patent No. 5,984,970); and Claims 9, 11, 22, 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rushdy, et al. in view of Berman and further in view of Saffar (U.S. Patent No. 5,047,059).

By this amendment, Claims 1, 15, and 26 have been amended. The basis for these amendments can be found throughout the specification, claims and drawings as originally filed. No new matter has been added.

The preceding amendments and the following remarks are believed to be fully responsive to the outstanding Office Action and are believed to place the application in condition for allowance. In view of the preceding amendments and the following remarks, the rejections are traversed and reconsideration of this application is respectfully requested.

**REJECTION UNDER 35 U.S.C. § 103**

Claims 1-30 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rushdy, et al. (U.S. Patent No. 6,319,284) in view of Berman (U.S. Patent No. 6,017,366); Claims 5,7, 19, and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Rushdy, et al. in view of Berman and further in view of Bramlet (U.S.



Patent No. 5,984,970); and Claims 9, 11, 22, 23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Rushdy, et al. in view of Berman and further in view of Saffar (U.S. Patent No. 5,047,059). Applicants respectfully traverse these rejections.

In this regard, Applicants' independent Claims 1, 15, 26, 29, and 30 are directed to a method or device used to fuse a first phalange to a second phalange, where the device includes a middle portion having a fixed angle formed between a first end portion and a second end portion.

In contradistinction, Rushdy, et al. is directed to a toe implant 10 that includes a proximal stem 16, a distal stem 18, and a hinge 20. This hinge "provides a relatively good available range of motion", enables "bending and flexing", and "allows the toe 12 to move in a fashion that simulates the natural motion" (see Abstract). In other words, Rushdy, et al. is directed to a toe implant that includes a hinge 20 that is not fixed, but is specifically designed to bend and flex. In the Background of Rushdy, et al., Rushdy, et al. sets out "an arthrodesis procedure involves the fusion of the bones of the joint (see column 1, lines 23-24) and "arthrodesis is effective in eliminating pain but at the expense of joint immobility, . . ." (see column 1, lines 30-31). Rushdy, et al. then goes on to set out that it is an object of the invention to "provides increased available range of motion", "allows the toe to move in a fashion that better simulates the natural motion . . .", "that does not significantly increase . . . or alter the normal flexing of the toe", and "provides relatively good joint mobility" (see column 2, lines 4-21). As such, Rushdy, et al. is directed to a flexible toe implant 10 having a flexible hinge 20 that enables normal range of motion. In fact, Rushdy, et al. teaches away from fusing the joint, as is clearly set out in its background and objects of the invention. Accordingly, Rushdy, et al. does

not teach or suggest and, in fact, teaches away from a device to fuse a first phalange to a second phalange, which includes a middle portion having a fixed angle between a first end portion and a second end portion, as set out in each of Applicants' independent Claims 1, 15, 26, 29, and 30. Thus, Rushdy, et al. does not teach or suggest the invention of these independent claims or their corresponding dependent claims.

Berman is directed to a resorbable implant. Bramlet is directed to an arthroplasty joint assembly that is preferably formed from a silicone-based polymer, known as silastic. The member further includes screws or fasteners formed from titanium, titanium-based alloy, stainless steel, or cobalt chromium alloy. Saffar is directed to a prosthesis for metacarpophalangeal or interphalangeal articulation of the fingers that is formed from polyethylene and metallic rods. As such, neither Berman, Bramlet, nor Saffar, considered individually or the combination with Rushdy, et al. teaches or suggests the invention claimed in Applicants' independent Claims 1, 15, 26, 29 and 30, along with their corresponding dependent claims. Accordingly, it is respectfully requested that the rejections under 35 U.S.C. §103 be withdrawn.

#### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and as such, the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the



Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

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